

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAFAEL MARQUEZ AMARO, *et al.*, on  
behalf of themselves and others similarly  
situated,

Plaintiff,

v.

BEE SWEET CITRUS, INC., *et al.*,

Defendants.

Case No. 1:21-cv-00382-JLT-EPG

ORDER FOR DEFENDANT BEE SWEET  
CITRUS, INC. TO SHOW CAUSE WHY ITS  
THIRD-PARTY COMPLAINT AGAINST  
THIRD-PARTY DEFENDANTS EDUARDO  
SOTO, FLC-RB AND A.G.R. SHOULD NOT  
BE DISMISSED FOR FAILURE TO  
COMPLETE SERVICE PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE  
4(m)

Defendant Bee Sweet Citrus, Inc. (“Defendant Bee Sweet”) filed a third-party complaint against third-party defendants. (ECF No. 30). The Clerk of Court issued summons to third-party Defendants A.G.R. Contracting, Inc., FLC-RB, and Eduardo Soto on March 31, 2023. (ECF No. 53). For the reasons given below, the Court orders Defendant Bee Sweet to show cause why its third-party complaint should not be dismissed without prejudice for failure to complete service pursuant to Federal Rule of Civil Procedure 4(m).

Plaintiffs Rafeal Marquez Amaro and Javier Barrera initiated this putative class action on March 3, 2021, against Defendant Bee Sweet and Does 1-10. (ECF No. 1). Defendant Bee Sweet’s first motion to dismiss was denied on August 18, 2022. (ECF No. 23). On August 31, 2022, Defendant filed an answer to Plaintiffs’ complaint (ECF No. 29) and a counterclaim against Plaintiffs (ECF No. 31).<sup>1</sup> That same day, Defendant also filed a “crossclaim” against Eduardo

<sup>1</sup> Defendant Bee Sweet’s motion for judgment on the pleadings or for summary judgment (ECF No. 31) and

1 Soto, *also known as* Eduardo Soto, FLC and/or Soto Farm Labor Contractor, FLC-RB, A.G.R.  
2 Contracting, Inc, Roes 1-20, inclusive, and Moes, 1-40, inclusive. (ECF No. 30).

3 In a joint status report filed on March 29, 2023, Defendant Bee Sweet informed the Court  
4 that it had “filed a Cross-Claim and Impleader for Indemnity, Contribution, and Declaratory  
5 Relief against the three labor contractors who were not sued by Plaintiffs in their complaint, but  
6 mentioned as possible labor contractors who had possibly supplied their crews for harvesting.”  
7 (ECF No. 52, p. 5). The status report stated that, at the time of filing, the Clerk of Court has not  
8 “yet issued the Summons and new case documents for Bee Sweet to serve on these Cross-  
9 Defendants.” (*Id.*) On March 31, 2023, the Clerk of Court issued summons to the third-party  
10 defendants named in Defendant Bee Sweet’s third-party complaint. (ECF No. 53).

11 The Federal Rules of Civil Procedure provide that “[a] defending party may, as a third-  
12 party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all  
13 or part of the claim against it” within fourteen days after serving its original answer. Fed. R. Civ.  
14 P. 14(a)(1). Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90  
15 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—  
16 must dismiss the action without prejudice against that defendant or order that service be made  
17 within a specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for  
18 the failure, the court must extend the time for service for an appropriate period.” *Id.*

19 Here, more than ninety days have passed since the Clerk of Court issued summons as to  
20 the third-party defendants named in Defendant Bee Sweet’s third-party complaint. However, a  
21 review of the record does not indicate that third-party Defendants A.G.R. Contracting, Inc., FLC-  
22 RB, and Eduardo Soto have been served. Accordingly, the ninety-day time period for service  
23 under Rule 4(m) appears to have expired without service being achieved.

24 Accordingly, IT IS ORDERED as follows:

- 25 1. Defendant Bee Sweet shall show cause why its third-party complaint against third-party  
26 Defendants A.G.R. Contracting, Inc., FLC-RB, and Eduardo Soto should not be dismissed  
27 without prejudice for failure to complete service pursuant to Federal Rule of Civil

28 Plaintiffs’ motion to dismiss Defendant Bee Sweet’s cross-complaint (ECF No. 37) are currently pending before  
District Judge Jennifer L. Thurston.

1 Procedure 4(m);

- 2 2. Defendant Bee Sweet shall file, no later than August 16, 2022, proof of service as to these  
3 third-party Defendants or a response to this order to show cause demonstrating that  
4 Defendant Bee Sweet has good cause for failing to complete service on these third-party  
5 defendants and explaining when Defendant Bee Sweet, as a third-party plaintiff, will  
6 complete service; and  
7 3. Defendant is cautioned that failure to respond to this order to show cause may result in the  
8 dismissal of these third-party Defendants from the action.

9 IT IS SO ORDERED.

10 Dated: July 12, 2023

11 /s/ Eric P. Gray  
12 UNITED STATES MAGISTRATE JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28